HOUSE OF COMMONS

First Session—Twenty-Fourth Parliament

1958

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: C. A. CATHERS, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

including Third Report to the House

Bill C-37—An Act respecting the Taxation of Estates

WEDNESDAY, JULY 23, 1958

WITNESSES:

Dr. A. K. Eaton, Mr. Gear McEntyre, Mr. W. I. Linton,
Mr. D. S. Thorson.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

61230-9—1

STANDING COMMITTEE ON BANKING AND COMMERCE

Chairman: C. A. Cathers, Esq.,

Vice-Chairman: Yvon Tassé, Esq.,

and Messrs.

Allard	Gour	Nugent
Allmark	Horner (*Jasper-Edson*)	Pallett
Asselin	Jones	Pascoe
*Bell (*Carleton*)	Jung	Pickersgill
Benidickson,	Keays	Regier
Brassard (*Chicoutimi*),	Lockyer	Robichaud
Cardin	MacLean (*Winnipeg North Centre*)	Rowe
Chevrier	Macnaughton	Rynard
Chown	Macquarrie	Southam
Coates	MacRae	Taylor
Creaghan	Martel	Thomas
Crestohl	Martin (*Essex East*)	Thrasher
Deschambault	McIlraith	Vivian
Drysdale	More	White
Dumas	Morris	Winch.
Flynn	Morton	
Fraser		

*Replaced by Mr. Horner (*The Battlefords*) on July 24, 1958.

Antoine Chasse,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, July 24, 1958.

Ordered,—That the name of Mr. Horner (*The Battlefords*) be substituted for that of Mr. Bell (*Carleton*) on the Standing Committee on Banking and Commerce.

Attest

LEON J. RAYMOND,
Clerk of the House.

61230-9—1½

REPORT TO THE HOUSE

THURSDAY, July 24, 1958.

The Standing Committee on Banking and Commerce begs leave to present its

THIRD REPORT

Your Committee has considered Bill C-37, An Act respecting the Taxation of Estates and has agreed to report it with the following amendments, namely:

Clause 7

Page 10, line 35, after the word "section" insert the following:
64, 78 or

Clause 9

Page 16, line 19, delete 39 and substitute 38 therefor.

Clause 12

Page 17, strike out lines 39 and 40 and substitute therefor the following:

(5) The Minister may at any time assess tax, interest or penalties under this Part or notify in writing any person by whom any return is filed that no amount is payable as tax under this Part in respect of the death of the deceased, and may

Page 18, strike out lines 1 to 6 and substitute therefor the following:

(b) Within four years from

(i) The date of an original assessment or notification that no amount is payable as tax under this Part in respect of the death of the deceased, or

(ii) The date any property is disposed of under a disposition or agreement described in paragraph (1) of subsection (1) of section 3,

In any other case,

reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require".

Clause 28

Page 27, strike out lines 19 to 21 and substitute therefor the following:

That belonged at that time to the deceased shall, unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length, be determined for the purposes of this Part, as though each such share so belonging to the deceased formed part of a group of shares

Clause 38

Page 32, strike out lines 21 to 24 and substitute therefor the following:

Effected on the life of the deceased or payable under an annuity contract in respect of the death of the deceased, and any policy of insurance or annuity contract in which the deceased had an interest shall be deemed to be situated in the place

Clause 57

Page 43, line 39, after the word "prescribing" insert the following:

The nature of

A copy of the Minutes of Proceedings and Evidence relating to the above mentioned Bill is appended hereto.

Respectfully submitted,

C. A. CATHERS
Chairman.

(*Note: Second Report concerned private bills*)

MINUTES OF PROCEEDINGS

House of Commons, Room 118,
WEDNESDAY, July 23, 1958.

The Standing Committee on Banking and Commerce met at 3:30 o'clock p.m. The Chairman, Mr. C. A. Cathers, presided.

Members present: Messrs. Allard, Allmark, Asselin, Bell (*Carleton*), Benidickson, Cathers, Creakhan, Crestohl, Deschambault, Drysdale, Flynn, Fraser, Gour, Jones, Lockyer, MacLean (*Winnipeg N. Centre*), Macquarrie, MacRae, Martel, Morton, Nugent, Rynard, Southam, Tasse, Thomas, Vivian, White.

In attendance: Honourable Donald Fleming, Minister of Finance; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance (on retirement leave); Mr. Gear McEntyre, Deputy Minister, National Revenue, Taxation Division; Mr. W. I. Linton and Mr. A. L. DeWolf, of the Department of National Revenue; Mr. E. H. Smith, Department of Finance; Mr. D. S. Thorson, Department of Justice.

The Committee resumed consideration of Bill C-37, an Act respecting the Taxation of Estates.

Clauses 28 to 60 were severally considered and adopted with some amendments.

The Preamble and the Title were also adopted and the Bill ordered to be reported to the House with the following amendments:

Clause 7

On motion of Mr. Bell (*Carleton*), seconded by Mr. Drysdale,
Page 10, line 35, after the word "section" insert the following
64, 78 or

Clause 9

On motion of Mr. Bell (*Carleton*),
Page 16, line 19, delete 39 and substitute 38 therefor.

Clause 12

On motion of Mr. Bell (*Carleton*), seconded by Mr. Jones,
Page 17, strike out lines 39 and 40 and substitute therefor the following:

(5) The Minister may at any time assess tax, interest or penalties under this Part or notify in writing any person by whom any return is filed that no amount is payable as tax under this Part in respect of the death of the deceased, and may

Page 18, strike out lines 1 to 6 and substitute therefor the following:

(b) within four years from

(i) the date of an original assessment or notification that no amount is payable as tax under this Part in respect of the death of the deceased, or

(ii) the date any property is disposed of under a disposition or agreement described in paragraph (6) of subsection (1) of section 3,

in any other case,

reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require.

Clause 28

On motion of Mr. Nugent, seconded by Mr. Bell (*Carleton*),

Page 27, strike out lines 19 to 21 and substitute therefor the following:

that belonged at that time to the deceased shall, unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length, be determined for the purposes of this Part, as though each such share so belonging to the deceased formed part of a group of shares

Clause 38

On motion of Mr. Bell (*Carleton*), seconded by Mr. Jones,

Page 32, strike out lines 21 to 24 and substitute therefor the following:

effected on the life of the deceased or payable under an annuity contract in respect of the death of the deceased, and any policy of insurance or annuity contract in which the deceased had an interest shall be deemed to be situated in the place

Clause 57

On motion of Mr. Nugent, seconded by Mr. Bell (*Carleton*),

Page 43, line 39, after the word "prescribing" insert the following:

the nature of

At the conclusion of the Proceedings the Minister, Honourable Donald Fleming, thanked the Committee for its work on the Bill, and in turn the Chairman expressed the gratitude of the Committee to the Minister and his officials for their valuable assistance.

At 6:00 o'clock p.m. the Committee adjourned to the call of the Chair.

Antoine Chasse,
Clerk of the Committee.

EVIDENCE

WEDNESDAY, July 23, 1958.
3:30 p.m.

The CHAIRMAN: Order. Gentlemen, we will proceed with section 28 on page 27.

Mr. BENIDICKSON: Mr. Chairman, have you received any further representations?

The CHAIRMAN: I received a brief from the Canadian Chamber of Commerce and they said if there is any further information we wish they would be glad to send a representative.

Mr. BENIDICKSON: I think all members of the committee received that brief. It is now percolating down to the public that we are sitting and the sections which we have chiefly dealt with are the ones to which they are referring.

Mr. BELL (*Carleton*): Does that refer to section 28?

Mr. BENIDICKSON: They indicate they have seen Bill C-37 and they would like to come before the committee if they could be of any help.

Mr. BELL (*Carleton*): That is the brief dated May 7.

Mr. BENIDICKSON: It is a letter to all members of the committee.

The CHAIRMAN: It is dated July 22 and addressed to all the members "Gentlemen".

Hon. DONALD M. FLEMING (*Minister of Finance and Receiver General*): May I have the permission of the committee to refer to a letter I received today. I mentioned to the committee—I think on Tuesday—I had a call from the general manager of one of the trust companies saying that he wanted to acquaint me with his views on several of the provisions of the bill. I think the committee understood that I would bring this matter to it if there was any new point raised in the letter apart from those already discussed.

I received this letter at noon today. I can say quite quickly that there are five points raised in it. I think that there is nothing new in any of then but perhaps the committee would like me to mention them.

The first point is in relation to section 9 of the bill. The writer says:

> 1. This section deals with the deduction from the dominion duty by virtue of some part of the duty paid by a decedent domiciled in a prescribed province. Let us take a specific example. A man dies domiciled in Ontario with all his assets situated outside the prescribed province. Let us assume that these assets have a situs in the province of Manitoba, by reason of their being fully registered bonds of that province. Under these circumstances, while the full duty will be paid to the provincial government of Ontario there will be no rebate on the dominion duty. But, however, if instead of registered bonds of the province of Manitoba the decedent had exactly the same securities but in bearer form, situated in the province prescribed, then the assets would be considered to be in the prescribed province and there would therefore be the proper proportion of the Ontario duty deducted as rebate on the dominion duty. It is strongly recommended that there be no distinguishment of situs on property anywhere in Canada. Also, the rules of situs as set

out in the act are not necessarily the same as the principles laid down by the courts over long periods of time, and thus will be very confusing and perhaps be a source of unnecessary litigation.

This point was dealt with quite fully when we were on this clause. Mr. Linton went over these points, but perhaps the committee would wish to have comment on this objection and on the example that is put forward by the writer of the letter. Could Mr. Linton be heard on that point.

Mr. W. I. LINTON (*Administrator, Succession Duties, Department of National Revenue*): That is true. The two points are that the test of whether a provincial credit is allowable depends on the situs of the property, whereas in the Succession Duty Act it depends on whether the province taxes the asset; and secondly, that the rules will differ from the common law rules to some degree.

To take the second point first, one of the reasons why they do differ is to avoid confusion and not to create it, and it is hard to see how the rules would be a source of unnecessary litigation.

On the first point there will certainly be a difference in the credits granted as between the two acts, and the placing of the credit on the basis of situs is related to the tax-sharing arrangements with the province, on which you heard Dr. Eaton speak at an earlier stage.

Mr. FLEMING (*Eglinton*): The second point reads as follows:

> 2. Perhaps with certain specific individuals in mind, the new estates tax bill brings into the taxation value of an estate foreign real estate. I will not stress this point as it has been dealt with in the brief, but to cure certain cases a law of general application, as is contemplated, may have serious repercussions on the tax laws of other countries and thus discourage investment in the growth of Canada by foreign investors.

That point was also raised and we dealt with it specifically. Dr. Eaton made a comment on that. I do not know whether the committee wishes any further comment on it, but we dealt with that point very specifically.

The third point reads:

> The combined impact of succession duty and income tax on surplus of companies, lump sum payments of annuities on the death of the annuitant, premium commission funds of life insurance agents, etc., involve double taxation. I have in mind a company that has a total worth of $1 million, made up of $200,000 capital stock and $800,000 surplus. This company is owned by an individual who has very few outside assets, and on his death it will be necessary to realize on the assets of the company to pay succession duty on say $1 million, of which $800,000 will be subject to income tax at a high rate so that in effect the surplus of $800,000 will only net $400,000. The tax is levied at the value of $1 million instead of the proper value of $600,000.

May I suggest, Mr. Chairman, that Mr. McEntyre be asked to make a comment on this point.

Mr. J. Gear MCENTYRE (*Deputy Minister, Department of National Revenue*): Mr. Chairman, this has been a problem that has been coming up over a number of years and for that reason a special provision was enacted in the Income Tax Act to try to cure the situation that arose when the majority shareholder of a company died and there is accumulated surplus in the company.

Part II of the Income Tax Act provides that the company may elect and pay a tax of 15 per cent on the surplus as it existed in 1949, which would in effect free that surplus or that portion of the existing surplus for distribu-

tion to shareholders, tax free, usually in the form of the issuance of preferred shares or something of that kind, which could then be redeemed on the death of the brief shareholder and would make funds available to his estate to pay the duty.

Then with respect to the accumulated surplus between 1949 and the date of death or subsequent to 1949 there is provision that the 15 per cent tax can be paid to free a portion of the surplus equivalent to the amount of dividends actually paid out by the company year by year. Therefore, this problem has been recognized and I think the cure has been provided in the Income Tax Act.

Mr. FLEMING (*Eglinton*): The fourth point reads as follows:

> 4. The act does not provide for the issuance of a certificate of discharge. It also states that the minister may re-open for additional taxation at any time further taxable assets are discovered, even by way of gifts during the three-year period. The effect of these two sections is to place an intolerable burden on an executor in that he never can distribute the estate as he does not receive a clearance certificate.

I would like to make the comment that I think in writing this particular paragraph the writer has overlooked the change that has been made in the present Bill C-37 as compared with Bill 248. Now the liability rests on the executor only where he has failed to exercise due diligence. I think that point is overlooked in that clause and is the answer to that clause.

Mr. FLEMING (*Eglinton*): The final point is, Mr. Chairman:

> In view of the fluctuation of the market and the time elapsed between the date of death and the date of realization of assets, some consideration should be given to alternative valuation date, say six months after the date of death. You will remember the Wilder Estate.

We dealt with this subject very specifically yesterday. We examined the same suggestion which had been made as to the alternative date and I think the committee came to the conclusion, as we did in the revision of Bill 248, that the difficulties in the way of offering the taxpayer an alternative date are very great.

The final comment in the letter reads thus, Mr. Chairman, after stating the five points I have read:

> While there are other points that are also important, I realize that in a letter of this kind one cannot add much more without in effect repeating the brief.

He is referring there to the brief submitted several months ago on behalf of the Trust Companies' Association, which was very carefully considered.

> It is my sincere wish to be as helpful as possible to any governmental officials in carrying through the new principles of the Estate Tax which when changed in some respects and clarified as to language will stand out as an excellent piece of legislation.

Mr. BENIDICKSON: Would the chairman read for the record, since we seem to be following this practice, the letter which has been received by him from the Canadian Chamber of Commerce?

The CHAIRMAN:

> I am enclosing a submission which the chamber made to the Minister of Finance last May regarding Bill 248. As you will note, this submission deals in considerable detail with the terms of the former

bill because the matter of estate taxation is of considerable interest to the members of the chamber and indeed can have quite an impact on the economy generally.

It will be noted that Bill C-37 that you are presently examining, implements a number of the suggestions made by the chamber in the attached brief. We are appreciative of this reflection in the new bill of the chamber's submission.

There are still, however, a number of provisions of major importance which have not found their way into Bill C-37. I refer particularly to the general recommendations that appear on pages 4 and 5 of the enclosed brief relating to pension and death benefits, alternate valuation date and marital exemption. The reference to pensions and similar income rights is expanded on page 14, section 16(1)(a).

We would urge consideration of these provisions on the committee and if we can usefully contribute to your discussions, we should be glad to have representatives from the chamber appear before you.

Mr. FLEMING (*Eglinton*): The points made there, Mr. Chairman, are all points that the committee have already examined very carefully.

One of them is the matter of community of property. Another is the matter of taxation on annuities and pensions, which has already been dealt with. The third is the alternative date of valuation which we have dealt with. I think all of these points have been very thoroughly considered and examined already.

If I may, Mr. Chairman, refer to another matter. When we were on page 17 of the bill, in clause 12, subclause (5), which carried over to the top of page 18, the point arose in regard to assessment. It is in respect to the subject of the right to assess at a later date without limitation of time in cases where no notice of assessment had been issued where it was obvious there was no tax payable.

I was asked to look into this subject further. We carried the clause but I gave the committee assurance we would look into that matter again to see if there was anything we could do to meet the views put forward by some hon. members of the committee. I have come forward with an amendment which I think may be of assistance in meeting the point.

Perhaps Mr. Bell would move this amendment, Mr. Chairman, after it is read, and we could have an exposition of the change from Mr. Linton and Mr. McEntyre.

Mr. BELL (*Carleton*): I would move:

That Bill C-37, An Act respecting the Taxation of Estates, be amended

(*a*) by striking out lines 39 and 40 on page 17 thereof and substituting therefore the following:

"(5) The Minister may at any time assess tax, interest or penalties under this Part or notify in writing any person by whom any return is filed that no amount is payable as tax under this Part in respect of the death of the deceased, and may"

and

(b) by striking out lines 1 to 6 on page 18 thereof and substituting therefor the following:

"(*b*) within four years from

(i) the date of an original assessment or notification that no amount is payable as tax under this Part in respect of the death of the deceased, or

(ii) the date any property is disposed of under a disposition or agreement described in paragraph (1) of subsection (1) of section 3,

in any other case,

reassess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require."

Mr. FLEMING (*Eglinton*): Mr. Chairman, perhaps I could just say a word about the changes that have been made here.

The change in the first part—that is in (*a*)—consists of an addition. In other words, where in the bill now it is provided that the minister may at any time assess, it is now provided as well that he may notify in writing any person by whom no return is filed that no amount is payable as tax under this part.

In other words, in cases where he does not issue a notice of assessment because no tax is payable, we now intend to add a provision that in that case he may notify anyone in writing by whom the tax is not payable that no tax is payable.

Mr. CRESTOHL: Does that mean the four years begins to run?

Mr. FLEMING (*Eglinton*): Now, we come to the second part, (b). Where formerly a four-year limitation was applied from the date of the original assessment or the date any property is disposed of, it will also apply now in the case where a modification is sent that no amount is payable as tax under this part in respect of the death of a deceased.

If I can clarify that one stage further: there is still no notice of assessment in the proper sense of that word in a case where there is no tax payable, but in that case we propose to add a provision that the minister may issue a notice in writing to that individual. It will not be a notice of assessment. When he does issue that notice in writing, so far as the four-year limitation is concerned, it has the same effect as in the case where the notice of assessment is issued.

Mr. CRESTOHL: Is there any indication of when that notification must be issued after the death? Assuming the minister does not choose to send that notification, that there is no tax payable, for a year or two after death that means that the heirs will then lose the benefit of two years of the four-year period.

Mr. FLEMING (*Eglinton*): That is true with a taxable estate, too, Mr. Crestohl.

Mr. CRESTOHL: Yes.

Mr. FLEMING (*Eglinton*): But this is opening up something of a new procedure in order to give the estate that is not taxable the benefit of the four year limitation. That is the point which was raised yesterday by Mr. Jones and Mr. Drysdale.

Mr. CRESTOHL: That is perfectly right. The remedy you suggest is a good one.

Mr. FLEMING (*Eglinton*): And may I add also in any case where any taxpayer makes a request for such a notice the department will issue it and in that case the department would say: "Well, all right, you file a return". You would have to have a return filed, but in that case the notice in writing will be issued on request.

Mr. FRASER: May I ask a question? The wording is "may notify". Well, anyone that sent in would he not notify everyone that sent in, or would it be left up to him?

Mr. LINTON: We would propose as a matter of routine in a non-dutiable estate when it had been regarded by the department as being non-dutiable, send this notice at the same time as the release of the estate as a normal part of routine.

Mr. FRASER: It will go out in every case?

Mr. FLEMING (*Eglinton*): This is setting up a new bit of machinery for the benefit of the taxpayer and the non-taxable estate.

Mr. FRASER: I just wondered if that word "may" was the right word in there. He may or may not.

Mr. JONES: There are circumstances, Mr. Chairman, that might arise, I think all committee members will agree—which would make it undesirable for such a section to be made mandatory. I think discretion should be left there. I certainly welcome the change that has been made; it certainly improves the situation.

Mr. FLEMING (*Eglinton*): Thank you very much.

The CHAIRMAN: It has been moved by Mr. Bell and seconded by Mr. Jones, you have heard the amendment—agreed?

Amendment agreed to.

Mr. CRESTOHL: Mr. Chairman, while talking on this section I presume despite the fact that I was not here when it was originally discussed in principle I suppose we have opened up the discussion when we are amending it, and perhaps I can go back to it. Would you be good enough to state how this question of fraud will be determined in 5(a)—"has made any misrepresentation or committed any fraud"?

Now, would it be the unilateral decision of the department to say "in our judgment this man has made a misrepresentation or has committed fraud" or will it only be after a complaint has been made and a conviction secured?

Mr. FLEMING (*Eglinton*): There is no conviction necessary. It is the duty of the minister to assess and this is one of the things which must be taken into consideration by him in carrying out that duty. But for the taxpayer there is always the right of appeal.

The CHAIRMAN: We were discussing section 28 on page 27. Does 28 carry?

Mr. NUGENT: Mr. Chairman, I am still concerned over the fact that this section in its present wording would allow a minority shareholder related to someone else, even though they are at arm's length, to be treated as though the shares he held were part of the controlling interest in a firm or company, which might subject him to an inflated value.

I am most unhappy at that thought that despite facts which he might easily prove and might easily be provable he is still to be unable, under the present wording, to escape being put into a higher bracket.

Mr. FLEMING (*Eglinton*): Mr. Chairman, we would welcome any concrete suggestions that may help us to find a way out of this problem. It was very clearly outlined in the committee yesterday. We have been giving further consideration to it as I promised the committee yesterday we would. Here are some of the practical difficulties. You see, if you take the clause out altogether you have not got anything here to deal specifically with a situation of that kind. What is another alternative? To remove the blood relationship as the factor that by virtue of this clause puts the parties in the position of not being at arm's length?

Well, are you going to substitute some other standard? If so, what?

If you do not set up at any other form of test and you simply say the parties are not at arm's length, do you leave that to be determined as a question of fact

when the facts are in virtually every case completely within the knowledge of the party and the department has not got a chance in arriving at a determination of fact.

Now, there is the problem. If hon. members are not content we will be glad to hold this over from today's meeting until tomorrow's, and will welcome any concrete suggestions that hon. members may have. Mr. McEntyre can probably make a comment on any of these alternatives to the difficulties we are up against here which I think hon. members can see.

Mr. NUGENT: Well, I would suggest, Mr. Chairman, that if there is a specific provision there whereby the estate could prove that despite the blood relationship the shares were not treated or controlled in such a manner and were in fact unrelated minority shares even if the onus was on the shareholders to prove it you will make an inescapable conclusion in law.

Mr. FLEMING (*Eglinton*): Would this meet the situation, Mr. Chairman? I take it what he is suggesting is that the presumption that blood relationship does put the parties in the position of not being at arm's length might be regarded as a rebuttable presumption only rather than a presumption at law, and we might have the provisions standing on this basis, that if there is blood relationship, it may remain open to the parties notwithstanding that fact to establish—it will be up to them to satisfy the minister or upon appeal the board or court—that the parties were in fact dealing at arm's length.

Would that meet the point?

Mr. NUGENT: That is right.

Mr. FLEMING (*Eglinton*): If it is thought that would meet the point I certainly do not want to stand hard and firm on anything here. I think hon. members realize there is a real difficulty here and we want the help of the committee in writing the most fair and workable clause that we can.

Mr. CRESTOHL: Mr. Chairman, there was a remark yesterday that I should not put the department into the bond business. This I have no intention of doing but it might be an equitable way of dealing with shares that whilst the minority shareholder owns them they are of no value at all in the way of dividend distribution or in the way of any voting rights. They have no rights at all and yet those shares in the light of the majority shares may have a genuine value, but the deceased who held the majority shares actually leaves the estate nothing at all.

My suggestion is where such a situation develops if the department would consent to become the custodian of those shares until such time as they are sold or taken up by the majority shareholders, then the department is able to put a real value, an actual value on those shares in so far as they can be related to the estate.

I realize the difficulty but I think the department could be custodians and it might do the prejudiced minority shareholders some good if the minority shares went to the department as a custodian of those shares. It will certainly protect the minority shareholders and liquidate them in a year or two, three, or four and you have the real value of those shares.

Mr. FLEMING (*Eglinton*): I hope the committee will not propose to put the Department of National Revenue or the minister or the deputy minister of national revenue in that position. They should not be put in the position of being custodians of an estate. This is something brand new. I hope that suggestion will not be pressed.

Mr. JONES: It would be an infringement on civil rights in any event.

Mr. FLEMING (*Eglinton*): It is not as though the department is like the public trustee of the provinces and he is not the officer to take on that duty.

Mr. CRESTOHL: That might be perfectly true but at the same time the department is putting a tax on those shares at death. They are putting a value and a tax on those shares which the minority shareholder cannot pay. He has not got the money.

Mr. FLEMING (*Eglinton*): I think, Mr. Chairman, I will ask the committee to let the tax gatherer deal in money and not put him into the securities business.

Mr. CRESTOHL: I will not dispute the question. It is just a suggestion.

Mr. FLEMING (*Eglinton*): May I ask if an amendment along the lines indicated would meet with the wishes of the committee? Mr. Benidickson was one of those who raised the point yesterday. I trust the suggestion made by Mr. Nugent which I tried to restate might meet the point he raised.

Mr. BENIDICKSON: I think any move is desirable because, as you see it, you think under certain circumstances the crown has no chance.

I think that as this bill is drafted the taxpayer has no chance regardless of the fact as to whether or not they are at arm's length.

This is one of the important sections referred to in the brief of the chamber of commerce which the chairman has. It is to be found at the bottom of page 21. Would the chairman please put it on the record. They refer in the old bill to section 53 (2) and section 54 which are section 27 (2) and section 28 in the new bill respectively.

Mr. FLEMING (*Eglinton*): Mr. Linton has it here. Perhaps he might read it, Mr. Chairman.

Mr. LINTON:

> As to sub-section 53(2) and 54 it does not appear that the needs of the crown require that facts be disregarded. These sections require certain minority interests to be valued as though forming part of a majority interest even where the minority shareholder is demonstrably not part of a family connected controlling group. Regardless of the relationship between shareholders, the position of a minority shareholder is seldom enviable and even less enviable is the position of the estate of a deceased minority shareholder.
>
> Surely it is necessary to provide a rule, it could be established as a rebuttable presumption—leaving the burden of proof on the shareholder in question to prove that he was in fact at arm's length with the other shareholders.
>
> The council does not favour the disregard of facts to fit deemed administrative needs and recommends that "fair market value" be the sole criterion.

Mr. JONES: I suggest that the clause be worked on.

Mr. FLEMING (*Eglinton*): If that idea is acceptable, we might go on then, and Mr. Thorson will bring us an amendment of the point.

The CHAIRMAN: Does clause 29 carry?

Mr. BENIDICKSON: This is new. The comment of the tax foundation on the old section which has been carried forward is, that this is another result of the determination of the branch to win by statute what it was unable to win in the courts.

Mr. LINTON: There is some truth in that. The situation that is endeavoured to be covered here is one where a family group so arrange their affairs that the older members hold indebtedness of one kind or another,—be it debentures, notes, or something of that kind—which have very long maturity dates at no interest, with the provision however that they can be redeemed at any time that the corporation which is set up for this purpose decides to do so.

The case to which the member has referred decided that they had to be valued as if they could not be collected until the so-called due date. This clause simply proposes that this sort of security will be valued as if it was due at the date of death, thus eliminating only the long term.

Mr. CRESTOHL: Will Mr. Linton explain? Suppose there is what might be generally considered as a bad debt which is outstanding at the time of death, but which was one of those debts in which there was blood relationship to the deceased, but which nevertheless was a bad debt.

He does not want to pay it or cannot pay it. Does that mean that the debt too would be assessed and determined as taxable?

Mr. LINTON: Only on the value which it had at the date of death. If it is a bad debt at the date of death, it has no value and would be worth nothing. Thus it will be valued as due at the date of death and not in the year, for example, 2000 A.D.

Mr. CRESTOHL: It is a debt, but you do not speak of bad debts here. A bad debt is one where a person is able to pay but just does not want to pay.

Assuming that a blood relation owes $5,000 to the deceased, and has owed it for ten years, but the creditor does not want to sue him or to press him. The debtor just does not want to pay.

Mr. LINTON: Is the debt in question a long term one, or is it something just owing today? This would do nothing for the latter.

Mr. CRESTOHL: It would not be taxable under those circumstances.

Mr. LINTON: Not if it is not collectable.

Mr. CRESTOHL: It is just an accelarated rate of maturity.

Mr. LINTON: That is right.

Mr. CRESTOHL: And the date of maturity is the date of death.

Mr. LINTON: That is right.

Mr. BENIDICKSON: Would this not depend on whether or not the debt carries some interest liability to credit to the estate?

Mr. LINTON: If it is an interest bearing liability it would probably not be depreciated anyway by the term, because if it was a reasonable interest rate, the term would not be a discounting factor.

The CHAIRMAN: Does clause 29 carry?

Clause agreed to.

Clause 30.

Mr. CRESTOHL: Oh, Mr. Chairman, I have one more question on clause 29. Am I right in concluding that a debt which is past due is not affected by this?

Mr. LINTON: That is right.

Mr. CRESTOHL: It only concerns a debt which has not yet matured?

Mr. LINTON: That is right; that is the only place it would have any operation.

The CHAIRMAN: Does clause 30 carry?

Clause agreed to.

Clause 31.

Mr. CRESTOHL: Mr. Chairman, I would like to have an explanation about clause 30. Would Mr. Linton explain clause 30 especially in reference to a wife and to what extent can she use this fund for her own purposes, and when does it revert back into the estate?

Mr. LINTON: This would have nothing to do with the validity of any gift or use made of it by the donee.

One of the things this is introduced to correct is the valuation of gifts as of the date of death, when the donee has already disposed of the property.

Heretofore under the Succession Duty Act, if a gift was made which became taxable, the subject matter of the gift was valued at the date of death, even though the donee had disposed of it.

So you could have a situation where the donee sold something at a certain price which, after he sold it, apreciated in value, and he became taxable on the appreciation.

Mr. FLEMING (*Eglinton*): I think that after reflection Mr. Crestohl will realize that this is a more equitable rule and one which is, I think, bound to be of more assistance to the taxpayer than to allow the old rule to remain as it was.

The CHAIRMAN: Does clause 30 carry.

Clause agreed to.

Clause 31.

Mr. BENIDICKSON: Was this in the old bill?

Mr. LINTON: No.

Mr. BENIDICKSON: Would you mind explaining it?

Mr. FLEMING (*Eglinton*): Do you mean the act, or 248?

Mr. BENIDICKSON: 248.

Mr. LINTON: This is introduced to overcome the situation whereby a deceased person has made a gift of shares of a private company and has then arranged that the private company will issue bonus shares to all its shareholders pro rata, so that the shares he has given then become a smaller proportion of the issued capital than they were at the date of gift, in effect reducing the value of the gift since the only thing that can be taxed is the property given.

Perhaps I can give an example. A man in a private company might give 1,000 shares of its stock to his son. The company then issues to its shareholders bonus shares of an equal amount, so that the son then has 2,000 shares. But, his 2,000 shares have the same value after they are issued that 1,000 shares had before; yet without this section only 1,000 shares at the new value would value of the donation.

Mr. FLYNN: Is not the case covered by the preceding section?

Mr. LINTON: I do not think so, Mr. Chairman, because the donee has not disposed of his shares. He has only got bonus shares in addition. Capitalization of the company in these situations is not altered. The issued number of shares to the shareholders is altered, but the capitalization is the same. So no exchange of one thing for another has occurred.

Mr. FLYNN: You have in mind only the change in value resulting from the changing of the proportion of the shares held by the company.

Mr. LINTON: Precisely.

The CHAIRMAN: Is clause 31 agreed to?

Clause 31 agreed to.

On clause 32—shares of controlled corporation where beneficiary of insurance policy.

Mr. LINTON: Perhaps we should say on clause 32 that this is part of the reconstruction of bill 248 in relation to insurance.

Mr. FLYNN: There is a lot of criticism of the old one.

Mr. LINTON: Yes, and this is here to provide that the new insurance taxing principle does not result in anything taxed as insurance under the appropriate sections coming into the value of shares too. It ensures that certain property does not get taxed twice.

Mr. BELL (*Carleton*): It is a relief section.

Mr. LINTON: Yes.

Mr. FLEMING (*Eglinton*): Changes made with respect to insurance have been cordially welcomed on behalf of the life insurance underwriters association and life officers association.

The CHAIRMAN: Is clause 32 agreed to?

Clause 32 agreed to.

Clause 33 agreed to.

On clause 34—Persons domiciled outside Canada.

The CHAIRMAN: This is part II now.

Mr. FLEMING (*Eglinton*): Mr. Chairman, this brings us now to part II. We leave now the case of the person who has died, domiciled in Canada. Part II is confined entirely to the case of the person who dies domiciled outside of Canada, but who at the date of his death had property in Canada. This bill changes the basis of taxation of property of that kind.

In line with the conception of the estate tax, we are now proposing that we take all of that property in Canada and, instead of treating it as it was treated before, which gave rise to filing returns and showing the total property, the world-wide property, of the deceased, before levying on the portion of it located in Canada, the plan of part II is to take that property in Canada as an entity and without allowing deductions or exemptions to subject it to a flat 15 per cent tax. We think that is equitable. We think it is simple. We think it is the sort of thing that may help to encourage capital coming into Canada, because it provides any foreign investor with complete knowledge in advance of his total tax liability on death with respect to assets that on his death are located in Canada. It is a straight 15 per cent tax on the gross value of the Canadian property.

There is one change that has been introduced, since bill 248, and this again is for the relief of the taxpayer in this case. It was mentioned the other day that we are now allowing deductions of encumberances. That was not provided for in bill 248 and that was one of the cases in which there were representations. Perhaps you would like to have a word from Doctor Eaton on this conception of the new type of tax of the property located in Canada.

Mr. A. K. EATON (*Assistant Deputy Minister, Department of Finance*): Perhaps I could say just a few words on that. Essentially it is introducing into the estate tax the principle that we follow in the income tax. This can be regarded, if you like, as a codification or introduction of uniformity into our tax system. On income tax a person resident in Canada pays on his world income at graduated rates. Non-resident persons are taxed at a flat 15 per cent. There are no deductions or exemptions. It is an impersonal tax,—that is, just a flat rate. You could almost call it an excise tax, to just chop off 15 per cent of that income going out of the country. I might say historically that Canada has been one of the countries that adopted that system, and you will find it pretty universal throughout the world. All countries are now giving up the idea of taxing the residents of another country on a personal basis, that is, making a person resident in Canada, file an income tax return in France and instead are adopting the system of chopping off or deducting at a flat rate and letting the country of residence tax on the total income.

Now that principle is being followed here in the estate tax. They are not proposing to have any interest in the status of the non-resident dependant

or how large the estate is or whether they make charitable contributions and so on. We say "Here, there is a property situated in Canada, that is being protected by Canadian laws. That man does not live in Canada; he does not have any taxation status here. It is just that some of his property is situated in Canada." So that the law says, "We will treat is impersonally just as it is, in fact, the personal capital property within the country"; and appropriate to that kind of status is a flat rate tax rather than a graduated tax. That is the general principle on which this was adopted, and adds, as the minister says, a great deal of simplicity and certainty to the system.

Mr. BENIDICKSON: Do we follow in the matter of domicile in respect to the wife in tax matters, in the usual way, that a wife takes the domicile of her husband.

Mr. FLEMING (*Eglinton*): Yes, the matrimonial domicile is the domicile of the husband.

Mr. BENIDICKSON: Will we be considering any revision of domicile for those who have alternative residence. Some concern was expressed with respect to a resident of Canada who was not domiciled in Canada and what the effect might be under the change in this new form of estates duty. But, now it has been suggested to me that there is a very substantial reward now open to any woman who might marry some agreeable person in the West Indies, change her domicle, and if she was very wealthy would find that it was very much to her advantage to do so. But, it would not necessarily change her style of living in some other way.

Mr. BELL (*Carleton*): Would it be to her advantage or to the new husband's advantage?

Mr. FLEMING (*Eglinton*): Marriage might be quite a price to pay for any tax advantage you get in that case, Mr. Benidickson. But, if I may say, Mr. Chairman, if she wants to beat the Canadian law there are ways that she could do it without resorting to marriage for that purpose.

Mr. CRESTOHL: That might be too high a price to pay.

Mr. FLEMING (*Eglinton*): I hope I will not be asked to indicate what those other methods are.

Mr. BENIDICKSON: That seems to me to be a very simple one and would save her hundreds of thousands of dollars of tax, in wealthy cases, by simply changing domicile.

Mr. JONES: But in order to benefit by it she will have to die.

Mr. FLEMING *(Eglinton):* She will not get any benefit out of it.

Mr. BENIDICKSON: Everybody is concerned about conserving an estate for certain purposes. It would be to her advantage from that point of view.

Mr. FLEMING *(Eglinton):* If she wanted to take up a foreign domicile.

Mr. BENIDICKSON: She does not have to move her residence. She changes her domicile by reason of marriage to someone in the West Indies.

Mr. FLEMING *(Eglinton):* If she wanted to defeat the estate tax on her death. In the present situation of the succession duty, there are ways that she could do it. I do not think that the law can prevent it, no matter how we try. It is just the situation. If anyone wants to resort to a move of that kind it can be done. Fortunately, so far as we are aware it has not been attempted.

Mr. BENIDICKSON: This is a completely new principle in the matter of taxation in respect to a foreign domiciled person. The rate is so low that it provides a new thought with respect to avoidance of tax, still controlling the assets up until the time of death. It is not as easy to utilize this in the case of a male person but it looks easy in the case of a female.

Mr. FLEMING *(Eglinton):* In the case which Mr. Benidickson cites it could not apply to a married person.

Mr. BENIDICKSON: No; not in the way I put it. However, if they are domiciled in Canada, I think you are encouraging people to change their domicile and leave.

Mr. FLEMING *(Eglinton):* No; I do not concede that for a moment. Does anyone seriously suggest that a woman, with a Canadian domicile and some estate, is going to marry someone with a foreign domicile simply for the sake of acquiring thereby an automatic change in her domicillary status?

Mr. CRESTOHL: She does not have to marry to change her domicile.

Mr. FLEMING *(Eglinton):* That was the case given; she acquires the husband's domicile because under the law the domicile is the domicile of the husband. I cannot imagine any woman, particularly one of independent means, who is going to marry and take unto herself a husband just for the sake of acquiring a change of domicile.

Mr. CRESTOHL: There might be other reasons.

Mr. FLEMING *(Eglinton):* I think there would have to be in a case like that. I just cannot imagine such a case arising.

Mr. FLYNN: What about the Ontario and Quebec taxes on property left by a person domiciled outside? They do not have the same system. I understand that the tax is charged upon the whole estate. Would not the result of this new system be an incentive to people to reside in provinces other than Ontario and Quebec?

Mr. LINTON: I do not think so. There is a provision in clause 37 for a credit in regard to provincial taxes.

Mr. FLYNN: Yes; but just the same if you use 15 per cent and are allowed only half of this 15 per cent—

Mr. LINTON: Yes.

Mr. FLYNN: —that is not a big deduction on the tax payable to Quebec or Ontario. I do not mean to say that we have to consider this, but would that not be an effect of the new system?

Mr. FLEMING (*Eglinton*): That is possible in the case where the provincial tax rate on the estate is higher than the effective new federal rate.

Mr. FLYNN: It is likely to be.

Mr. FLEMING (*Eglinton*): Well, it might or it might not be, depending on the circumstances. You see you are taking the aggregate property intact without deduction or exemptions; you are taking off encumbrances but are not allowing any exemptions or deductions. It may well be that there are not too many of those cases where the effective federal rate is going to be appreciably lower than the provincial rate; but, if it is, well, it is just lower, that is all. We are not attempting to tell the provinces how they ought to legislate in these situations.

Looking at the interest of Canada as a whole, we think there are advantages in this type of tax, obvious advantages from the administrative point of view. The simplicity of it is a commendation from the administrative point of view. From the point of view of the taxpayer it is of advantage to him not only in terms of the levy on his estate, the simplicity of it, but we think it may help to encourage the inflow of foreign capital into this country because of the fact that anybody coming in knows clearly in advance precisely what liability he is incurring under our federal estate laws in this country.

Mr. FLYNN: I am not discussing the principle. However, I thought it might have this effect, or the effect of forcing the provinces to change their system of taxation on property left by persons outside of these provinces.

Mr. EATON: The United States are allowed a tax credit, on their law, against taxes paid to Canada. Usually it is a matter of indifference, the amount of tax paid to a foreign government on a piece of property. It will usually be absorbed by his liability back home. It would not make much difference to the United States taxpayer whether he puts his money in here or his own country.

Mr. LINTON: The credit they would get at home would vary since they would get a credit on their net tax. It may be of interest to know that the average effective rate under the Succession Duty Act of a foreign estate is about 14 per cent.

Mr. CREAGHAN: Would the minister explain why we did not carry into part II the relief in clause 33 for quick succession? I can visualize a case, where in respect of people living abroad, the inheritance might go to the widow and she could not obtain the relief under clause 33, because the last word is "part" rather than "act".

Mr. FLEMING (*Eglinton*): That is quite so. Mr. Creaghan's interpretation of clause 33 is true. No provision is made for relief in the event of quick succession in the case of property in Canada owned by a person domiciled abroad because here we are dealing with a flat 15 per cent levy on the assets in Canada without allowing any deductions or exemptions. It is a simple comprehensive impost of 15 per cent in every one of these cases. We could not, we felt, start introducing some of the advantages which are extended to the taxpayer in the case of estates of persons dying domiciled in Canada if you are going to introduce the concept of a new type of tax with respect to property in Canada of persons domiciled abroad at the time of death.

Mr. CREAGHAN: I thought that if we did introduce it perhaps foreign countries would give the same privilege to our citizens who might earn assets abroad.

Mr. FLEMING (*Eglinton*): If at any time in the future there are negotiations working to a new convention, and there is any indication of willingness on the part of other countries to have such a mutual provision, then it could be considered.

Mr. CRESTOHL: I wonder if Mr. Linton would explain, in clause 34, the fourth line as compared to the second last line of the first paragraph, referring to the aggregate value of taxable property? In the one case he uses the language "aggregate value" and in another case "aggregate net value". I think the intention is also, in the fourth line, that an estate tax shall be paid as hereinafter required upon the aggregate net value.

Mr. LINTON: The idea in the first part is establishing the aggregate value for the purpose of this part II tax and the last part of the subclause is simply describing what is taxable by reference to the aggregate net value in the other part of the act.

Mr. CRESTOHL: Would it prejudice the section if you included the words "aggregate net value" in the fourth line?

Mr. LINTON: Yes, because I think in the Part I it is the value after deducting debts and the basic principle here is that the debts, with the one exception mentioned, are not deductible, nor personal exemptions, either.

Mr. CRESTOHL: I do not quite follow that.

Mr. BENIDICKSON: Mr. Chairman, we have seen that there is some lure already for wealthy Canadians, by reason of the non-existence of death duties in certain jurisdictions, to leave Canada. It seems to me we have two distinctly new features in this bill. One, we are taxing real estate outside of Canada, which is a new departure; and we are taxing non-Canadian domiciled people, foreign domiciled people, at 15 per cent.

It seems to me this is a further inducement to people who probably have not succumbed so far to that lure to give it greater thought if their holdings of foreign real estate in such an area are now substantial and they still propose to retain other Canadian assets. Both those accounts are an encouragement to that person to change their domicile.

What does Dr. Eaton think about that?

Mr. EATON: As to the feature regarding the taxing or inclusion in the estate of foreign real estate, I do not know whether that could be regarded as a factor which would operate.

Mr. BENIDICKSON: I am assuming that real estate is in a jurisdiction where the death duties are either low or non-existant.

Mr. EATON: I do not know. I have not considered that too fully, but I do assert this: in the absence of that provision for taxing real estate only in a jurisdiction where there are no loopholes you have left an unconscionable loop-hole in your law.

That is to say, a person in Canada can borrow money; with that money borrowed in Canada he can purchase real estate. The money borrowed in Canada becomes a debt against his estate in Canada, which reduces the amount taxable in Canada and he is not taxable on that asset which he has acquired by creating a debt in Canada.

Mr. BENIDICKSON: We have discussed that on the other one. But here is a second point: the man still finds reason to have substantial Canadian assets, but if he is not domiciled in Canada he is going to find it rather attractive, the estate will have a low death duty of 15 per cent. That, coupled with the fact that he does hold the real estate anyway in this area with low death duties, might just spur him on to change his domicile.

Mr. JONES: Mr. Chairman, perhaps Dr. Eaton might consider this: what would be the difference between the case Mr. Benidickson has cited and that of a person who simply sells his Canadian assets before death?

Mr. BENIDICKSON: Here is a person who has reason to retain his Canadian assets.

Mr. JONES: There are many ways in which you can arrange for the sale of your assets and get the advantage of them—surely, by arrangements with people in other countries—and still defeat the Succession Duty Act, or the Estate Tax Act.

Mr. EATON: I might comment a little further on this. There is greater incentive under the present law for changing domicile and avoiding a great big tax than there is for changing domicile and only avoiding a 15 per cent tax under this new act.

—(Discussion off the record)

Clause 34 agreed to.

On clause 35—Computation of aggregate value:

Mr. BENIDICKSON: This has been redesigned to meet a number of objections?

Mr. FLEMING (*Eglinton*): Yes, this has been designed to meet the point raised in a good many of the briefs.

Clause 35 agreed to.

On clause 36—Computation of tax:

Mr. CRESTOHL: Clause 36—I am just a little puzzled about that, Mr. Linton. Here we have a taxing section. Fifteen per cent of the aggregate value of that property. It is 15 per cent of the aggregate net value of the property.

Mr. LINTON: In this part of the act that term "aggregate net value" has not been used, but in 35 it says that in computing "aggregate value" there shall be a deduction for certain specific debts. So, to compute this aggregate, after you take those debts off, the amount that is left is the amount on which the 15 per cent is applied.

Mr. CRESTOHL: When a person is faced with 36 it would not prejudice the position of the department if you had there "15 per cent of the aggregate net value of the property."

Mr. LINTON: Then, Mr. Chairman, I think you would have to reconstruct the preceding section in order to make the aggregate net value the amount on which the tax is applicable, which it is not as it is constructed now.

Mr. CRESTOHL: I am not at all clear on it. I do not know why.

Mr. LINTON: What you would have to do is say in 35, for the purposes of arriving at "aggregate net value", there should be deducted this sort of thing and then aggregate net value would flow in here.

Mr. CRESTOHL: It may be the same result, but I think it would be clearer.

Mr. THORSON: The same result. We tried to avoid using exectly the same term as employed in part 1 just to avoid confusion in that section; so there would not be a confusion that aggregate net value meant the same thing in the two different parts, because it does not.

Mr. MORTON: Well, Mr. Chairman, there is some confusion because generally speaking we speak of an aggregate value as a general meaning. I wonder if it would save confusion if you just said "aggregate value as defined in the sections preceding", and that would save any confusion.

Mr. FLEMING (*Eglinton*): I think that would be superfluous and redundant, Mr. Chairman.

Clause 35 is perfectly clear and I think the two sections can be read together in determination of liability. I do not see how any possible ambiguity or uncertainty can arise as to the meaning of these clauses.

Mr. CRESTOHL: Except that it requires some study.

Mr. FLEMING (*Eglinton*): That is a good thing.

Mr. CRESTOHL: Excuse me, Mr. Chairman, but you are being consulted and want to tell someone what the tax will be, what are you going to say? How are you going to answer a person that the tax will be 15 per cent of the aggregate value of your estate provided you establish your aggregate value by the sections which precede section 36? I think that should be avoided where possible.

Mr. FLEMING (*Eglinton*): Surely the standard process is the correct process. Mr. Crestohl is consulted as to the tax liability in this case of a person dying domiciled abroad. He takes down the act and it says, section 36 says that the tax payable under this part in the case of deceased persons dying domiciled abroad, is 15 per cent of the aggregate value of that property.

Mr. CRESTOHL: You look at the marginal notes "computation of taxes".

Mr. FLEMING (*Eglinton*): No, the marginal note is not invoked for interpretation. So now the client says: Well, what is the aggregate value of the property? This section does not define the aggregate value of the property.

You look to the other sections for the determination of the aggregate value of property. Surely that is a standard basis of approach to this question.

It is the same thing under the Income Tax Act where you have got the expressions "income" and "taxable income". You do not find a complete code in that clause.

Mr. CRESTOHL: I do not remember the wording in the Income Tax Act but here I mean other members have practiced law as many of us have and if you are consulted you look at the computation of taxes. You do not read through the entire act to be able to answer a question off the cuff. You look up "computation of taxes" and you read 36, and if 36 would refer you back to 35, what aggregate value is then I can understand as it somewhere refers you back.

I think the suggestion made by the hon. gentleman over there was a practical one.

Mr. FLEMING (*Eglinton*): But you are dealing here with the aggregate value of that property. Speaking of marginal notes, all the reader of the statute needs do is look opposite 35, "computation of aggregate value", and there he has got the full code for determining aggregate value. We cannot repeat it in 36. The beauty of 36 is that it is a simple statement and the one expression that requires interpretation is clearly defined in 35.

The CHAIRMAN: Does clause 36 carry.

Clause agreed to.

Clause 37. Did you have some questions there, Mr. Benidickson?

Mr. BENIDICKSON: No.

Clause 37 agreed to.

On clause 38—Situs of property.

Mr. MACLEAN (*Winnipeg North Centre*): On this question of situs, Mr. Chairman, some of the members have pointed out some of these rules set down here vary quite definitely from the common law approach. Could we have some comments?

Mr. LINTON: Yes, as we said in regard to the rules in section 9 that is very true, they do. One reason they do is to make the operation of this part of the act easier both for the department and particularly for the taxpayer as the common law rules depend on a great many factors that are hard to ascertain, and difficult to apply. The result of these rules is that a great deal of property becomes taxable in Canada which would not if the common law rules were used and that principle was determined in negotiation of the tax treaties with the other countries which these rules follow very closely. Each of these treaties with foreign countries has situs rules in it. They are not all quite the same but these rules follow the general pattern very closely.

Mr. FLEMING (*Eglinton*): I think all who have had occasion to deal with the Succession Duty Act in their professional practices will have been faced with difficulty time without number over this question of determination of situs of property and you go and read all the authorities and sometimes even they are not too clear.

There have been some determinations in recent years that seem to the reader to suggest that there has been quite a development in the thinking of the courts in regard to the judicial determination of situs.

In approaching this new legislation it was felt that it would be of advantage to the taxpayer to lay down a series of statutory provisions governing the determination of situs of the various kinds of property and there everybody has the law stated, I think, clearly, ever so much more simply than it is possible to ascertain it through reference to the long line of judicial decisions.

This will have the advantage of clarity and simplicity and we think will help to reduce the amount of litigation that has arisen over determination of situs of property.

Mr. MACLEAN (*Winnipeg North Centre*): I think it is quite clear. I think it is an improvement.

Mr. FLEMING (*Eglinton*): That was the purpose behind it, Mr. Chairman.

Mr. Chairman, there is one change that I would like to introduce if I may in (g) on page 32. This is in relation to money deposited with an insurance company and again it arises out of the changes that have been made with reference to Bill No. 248 in respect of insurance.

Perhaps Mr. Bell would move it, Mr. Chairman.

Mr. BELL (*Carleton*): Moved that Bill C-37, an act respecting the taxation of estates, be amended by striking out lines 21 to 24 on page 32 thereof and substituting therefor the following:

> effected on the life of the deceased or payable under an annuity contract in respect of the death of the deceased, and any policy of insurance or annuity contract in which the deceased had an interest shall be deemed to be situated in the place

Mr. BENIDICKSON: What is the purpose of the amendment?

Mr. LINTON: The purpose of the amendment is to insure that the rule applies on third party contracts held by the deceased which the rule as unamended very doubtfully covered.

Mr. BENIDICKSON: I think it runs through the briefs that this particular section, (g), as previously drafted is one where the new situs would be at variance with most of your tax conventions.

Mr. LINTON: I think that is true, Mr. Chairman, and the result of it is that insurance policies in Canadian companies owned by persons domiciled outside Canada will not be taxable. Under the Succession Duty Act there is a specific exemption for them.

Mr. BENIDICKSON: It is not taking out of taxes anything that has not been out before, it is just necessary because of the new form of the act?

Mr. LINTON: It may take out of the taxes a very small amount of assets, not insurance policies proper but certain kinds of agreements where the amount is payable in Canada.

Mr. BENIDICKSON: Mr. Chairman, in view of the fact that practically all the briefs I have read seem to oppose the departure from the common law rules and in view of the fact we are doing so without any jurisdiction in two large provinces that do their own taxing with respect to death, I am going to have to say "on division". I would like to have a look at it.

Mr. FLEMING (*Eglinton*): I think Mr. Benidickson in saying that should be aware that this amendment we are putting up now is asked for and supported by the insurance companies.

Mr. BENIDICKSON: I am not referring to paragraph (g) but the whole section.

The CHAIRMAN: It has moved by Mr. Bell (Carleton) and seconded by Mr. Jones. You have heard the amendment. All those in favour?

Amendment agreed to.

Does clause 38 as amended carry?

Mr. BENIDICKSON: On division.

Clause 38 agreed to on division.

Mr. FLEMING (*Eglinton*): Before we move to a consideration of clause 39, may I say that we now have the draft of an amendment to clause 28, as we discussed earlier. Could we take that amendment at this point? Mr. Thorson drafted this amendment which has been submitted to Mr. Nugent who feels that it covers the point.

Perhaps Mr. Nugent would like to move this amendment, Mr. Chairman.

Mr. NUGENT: I move that Bill C-37, "an act respecting the taxation of estates", be amended by striking out lines 19 to 21 on page 27 thereof and substituting therefore the following:

> —that belonged at that time to the deceased shall, unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length, be determined for the purposes of this part as though each such share so belonging to the deceased formed part of a group of shares.

Mr. FLEMING *(Eglinton)*: The new words, Mr. Chairman, are:

> —unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length,—

Those are the saving words that have been added.

The CHAIRMAN: It has been moved by Mr. Nugent that clause 28 of Bill C-37 be amended in this manner.

Mr. BENIDICKSON: That seems to be quite an improvement, Mr. Chairman. I wonder if we could keep this section open in order to see what progress we make in regard to the act itself?—We may or may not be able to finish it.

Mr. FLEMING *(Eglinton)*: I was hopeful, Mr. Chairman, that we could dispose of this clause. It has been discussed very thoroughly. Mr. Thorson has drafted this amendment with the view of having it dealt with now while the matter was still fresh in our minds.

Mr. Benidickson, it will not take more than a moment to look it over. The additional words in clause 28 are:

> —unless it is established that the deceased and such one or more other persons were persons dealing with each other at arm's length,—

That means that it now lies within the power of the persons described in section 28—notwithstanding the existence of blood relationship—to prove that they were persons dealing with each other at arm's length. It is simple, and clear. I think Mr. Thorson is to be commended on having drafted this amendment in a form that is so simple and clear.

Mr. CREAGHAN: Mr. Chairman, would Mr. Thorson or the minister consider that a definition of "arm's length" should be included in the interpretation section, or are we going to take a chance on the Income Tax Act?

Mr. THORSON: It would be surprising to me if you wanted to have the provisions of the Income Tax Act imported holus-bolus in this section.

Mr. CREAGHAN: I am sure we would not, and that is why I wondered if we should have a special interpretation.

Mr. THORSON: I suggest to you that this would assume the ordinary common law meaning of the expression "dealing at arm's length".

That expression here has not been given any more sophisticated definition than has been provided for by common law itself.

Mr. CREAGHAN: Do you think that interpretation will be adopted by the Department of Justice for the next 20 years?

Mr. FLEMING (*Eglinton*): The answer is definitely yes, Mr. Chairman. There would certainly be no right on the part of a court to incorporate a statutory definition contained in the Income Tax Act in this regard when parliament itself has not seen fit to incorporate that statutory definition in enacting this bill.

Amendment to clause 28 agreed to.

On clause 39—Administration of act.

Mr. MacLean (*Winnipeg North Centre*): In regard to the words "— commissioner for administering oaths or taking affidavits." the appointment of a commissioner of oaths is, of course, a provincial appointment?

Mr. Thorson: Not necessarily, sir. There are some commissions issued by the federal government.

Mr. MacLean (*Winnipeg North Centre*): They are issued under the federal government authority?

Mr. Thorson: Yes.

Causes 39 to 41 inclusive agreed to.

On clause 42—Person leaving Canada or removing property.

Mr. Benidickson: What difficulties have been experienced here that give rise to clause 41?

Mr. Thorson: It was thought, Mr. Chairman, this was a more appropriate provision than any provision in the old act. This is similar to a similar provision in the Income Tax Act.

Mr. Benidickson: It is similar to the Income Tax Act, I agree, but I have heard so much protest on occasion about some of the harshness of the provisions of the Income Tax Act that I am a little surprised that some people would be in favour of bringing some of these provisions into another tax act, particularly when it has respect to capital, and not something a little more fleeting, like income.

Mr. Linton: In this area, Mr. Chairman, is the place where a change was made from Bill 248. It lightened some of these things so I think that answers the point.

Mr. Fleming (*Eglinton*): To meet the conscientious qualms of the minister, I might say Mr. Chairman, but they do not apply on this clause.

Mr. Benidickson: The minister approved Bill 248—or introduced it.

Mr. Fleming (*Eglinton*): I asked for everybody's comment on it.

Clauses 42, 43 and 44 agreed to.

On clause 45—inspection:

Mr. Benidickson: What does this mean in subclause (b); what are the practical applications going to be? (b) states "if it appears to him that an offence under this act has been committed". How slender a thing constitute an offence?

Mr. Linton: An offence defined somewhere as such.

Mr. Benidickson: Is that referred to in the definition section at the end?

Mr. Thorson: One of the offences expressly constituted by the act itself.

Mr. Linton: Clause 51 sets out a list of what are offences.

Clause 45 agreed to.

On clause 46—transfer of property by executor.

Mr. Flynn: It is practically the same principle as before.

Mr. Linton: Yes, the same principle.

Mr. Fleming (*Eglinton*): There is nothing new in principle in that clause.

Clause 46 agreed to.

On clause 47—consent to transfer:

Mr. Fleming (*Eglinton*): There are some new provisions here that greatly ease the provisions of the existing law. Perhaps Mr. Linton will say a word about the changes that have been made. There are changes here also as compared with Bill 248, all in the direction of giving greater ease to the taxpayer and the executor who is managing the estate and wishes ready access to the insurance or bank account for immediate purposes.

Mr. LINTON: Yes, Mr. Chairman. Certain classes of property under the Succession Duty Act, notably insurance proceeds can be paid without the consent of the minister up to $1,500 per policy. Under Bill 248 this was raised to $10,000 per company and then in this bill it was raised again to $11,500 per company. Certain other classes of property, notably bank accounts, can be so paid up to an amount of $500 in the Succession Duty Act and this has been raised to $1,500. In addition to these changes, there are small changes in increasing the classes of property that fall under this $1,500 limit.

Clause 47 agreed to.

On clause 48—consent to open or remove:

Mr. FLEMING (*Eglinton*): There is no change in substance here, Mr. Chairman. It is a well established procedure in regard to opening up depositories, consents to open and remove contents.

Mr. BENIDICKSON: What about subsection 3?

Mr. FLEMING (*Eglinton*): On page 39?

Mr. BENIDICKSON: Yes.

Mr. LINTON: It has been broadened.

Mr. BENIDICKSON: Is it as wide as we can make it? Are we still allowing some restrictions that are not of much advantage to the tax collector?

Mr. FLEMING (*Eglinton*): Our feeling was—and we studied it carefully in the light of representations and briefs submitted—we were going here as far as we could go in allowing removal of contents of boxes, documents and deeds, which are not strictly necessary to retain to prevent a transfer or disposition of property.

Mr. BENIDICKSON: What about a marriage contract which I understand in Quebec is rather a useful document—or an insurance policy? How could you get insurance proceedings without a release from these companies? They know the law.

Mr. FLEMING (*Eglinton*): In the case of an insurance policy you could not allow a removal without a specific consent.

Mr. LINTON: I do not think so because you might have a policy taken out by a person with a company which was not doing business now in Canada for one thing.

Mr. FLEMING (*Eglinton*): I think it would be dangerous to allow removal of things like insurance policies. But this clause widens the classes of documents which can be removed from the boxes without a specific consent to remove contents.

Mr. LINTON: With regard to the marriage contract, that is always a notarial deed and so the copy that may be in the boxes can easily be replaced with another copy. Anyone with a marriage contract will need more than one before he finishes with an estate anyway.

The CHAIRMAN: Does clause 48 carry?

Mr. BENIDICKSON: In regard to subclause (4), what increases, if any, in benefits are provided compared to the old Succession Duty Act?

Mr. LINTON: I will read, if you like, the offence and penalty clause from the Succession Duty Act.

Mr. BENIDICKSON: What is the number of it?

Mr. LINTON: Section 51, subsection (3).

Mr. FLEMING (*Eglinton*): It is referred to in the note.

Mr. LINTON:

> Every person who fails to comply with this section is guilty of an offence and for each offence is liable to a penalty not exceeding $1,000, and an amount not exceeding the amount of duty levied on or with respect to the properties contained in the safe, compartment of a safe or vault, or safety deposit box, opened or removed in contravention of this section, but such penalty does not apply when the minister is satisfied that the contravention of this section was not wilfull and occurred through ignorance of such death.

Mr. FLEMING (*Eglinton*): The maximum still remains the same, at $1,000, but you have still that provision for an additional sum computed in reference to the value of the property.

Mr. THOMAS: There is no reference to the tax that might be due. This reads as if it was an account not exceeding the aggregate value of any property mentioned.

Mr. LINTON: Not exceeding the value of the property. If somebody transfers property in contravention of this section, they incur the liability for this to the extent of the property they transfer.

Mr. FLEMING (*Eglinton*): In regard to the $1,000, there is no increase.

Mr. THOMAS: Does that mean the government can confiscate the aggregate amount of the property that was removed?

Mr. FLEMING (*Eglinton*): Yes, it could mean that.

Mr. THOMAS: Or the value of the tax on it?

Mr. BENIDICKSON: The representations in the brief—

Mr. FLEMING (*Eglinton*): This one I should point out is a penalty imposable not by the Department of National Revenue, but only by the court. This is not one of those penalties that the department, the tax gatherer can impose. This is one that only the court can impose in a court proceeding.

Mr. THOMAS: It looks rather drastic though.

Mr. FLEMING (*Eglinton*): It only states a maximum. The court is not obliged to impose the maximum.

Mr. LINTON: He may have defeated the whole collection of the tax by his action here.

Mr. NUGENT: I think the maximum could be larger in the case of very large estates.

Mr. BENIDICKSON: The only alternative would be whether it should be the mandatory fine stated here plus the aggregate amount of the property or the amount of taxes payable.

Mr. LINTON: The tax payable on the estate might be a great deal higher than the value of the property lost and this might be the only property the crown can proceed against. You might even have collusive action by some people who own safety deposit boxes or rent them. They are not all in the hands of the banks. You could have the whole collection of the imposed tax defeated by letting these assets go and I do not think the limit should be less than the value of the property released.

Mr. FLEMING (*Eglinton*): It is a maximum. It is up to the court to determine within that maximum what should be the principal penalty for the offence.

Mr. NUGENT: Is there no penalty for default in paying a fine?

Mr. THORSON: This is governed by the standard summary convictions procedure under the Criminal Code.

Mr. BENIDICKON: Do you have many worrying experiences of somebody going to a safety deposit box before the death of anybody having an interest in that box is known?

Mr. LINTON: Yes we have strong suspicions that happens because a number of boxes when you get to them are strangely empty.

Mr. BENIDICKSON: I was astonished when we read about the odd break-in of a trust company to realize the tremendous amounts of stocks which seem to be in bearer form and I was wondering if there was no device we could use to prevent that?

Mr. FLEMING (*Eglinton*): It may be a point in relation to the penalty clause here. There is no reason for taking a light view of the removal of property where that removal constitutes an offence.

Mr. CRESTOHL: To what extent is the penalty mandatory on a judge? He can impose a penalty of not less than $100 and he can impose a penalty between $100 and $1,000. But is it mandatory that you can impose an amount equivalent to the property involved?

Mr. FLEMING (*Eglinton*): Oh no.

Mr. THORSON: That is the maximum.

Mr. FLEMING (*Eglinton*): The word "liable" in subclause (4) governs (a) and (b). There is no mandatory provision there. There is just the standard provisions of any penalty clause of any statute and they are governed by the summary convictions procedure of the Criminal Code.

Mr. BENIDICKSON: What is the comparable penalty for offences under the Income Tax Act?

Mr. FLEMING: (*Eglinton*): You have not a comparable offence under the act.

Mr. BENIDICKSON: You have an offence.

Mr. FLEMING (*Eglinton*): You have not one which you could compare with this.

Mr. BENIDICKSON: There is something there that the judge can impose a fine and something in relation to the taxes.

Mr. THORSON: Perhaps Mr. Benidickson has reference to the provision in the other act that has been deleted from this bill providing that the court has no power to impose less than the minimum specified and no power to suspend sentence.

Clauses 48, 49 and 50 agreed to.

Does clause 51 carry?

Mr. FLYNN: You have about the same thing in the Income Tax Act. It seems to me that the minister should make up his mind and proceed only under section 20 or 51(3). I see here that after having assessed the penalty under section 20, he can proceed under section 51 paragraph 3.

Mr. FLEMING (*Eglinton*): Mr. McEntyre the deputy minister will answer your question.

Mr. MCENTYRE: The provision of that clause 51(3) is necessary in order to prevent the minister being able to impose both the penalty and at the same time proceed to charge the offender under the summary conviction procedure.

In this case, if a penalty is to be imposed, it must be imposed before the offence goes to court and a judge has to pass on it. So that in such a case the judge in imposing sentence under summary conviction would be aware of the penalty already imposed by the minister. Therefore it prevents the minister after they have gone to court on the offence and sentence has been passed from being able to impose additional penalties beyond what the judge had imposed.

Mr. FLYNN: I agree, but is there not the possibility that after the minister has assessed a penalty, he might think that he could charge more. Then he has a chance to go to court—just as if a judge might have a chance to correct his own judgement.

Mr. MCENTYRE: In that case the court would be aware of the penalty imposed by the minister and presumably the judge would give weight to that when passing sentence.

Mr. FLYNN: He certainly would!

Mr. NUGENT: This could be used in the way of blackmail, should a person argue too much about the assessment or the penalty. You could tell him: in addition to this, we can charge you under section 51(3), and you could use that as a threat.

Mr. FLYNN: Just as under the Income Tax Act, it seems to me to be wrong.

The CHAIRMAN: Does clause 51 carry?

Clause agreed to.

Does clause 52 carry?

Mr. BENIDICKSON: How innocent a thing is a deceptive statement? Supposing an executor makes such an error as describing somebody as a widow, assuming that the couple were married, but the relations perhaps in effect were not, or something of that kind. It is true that there is a benefit derived. Is that deceptive?

Mr. FLEMING (*Eglinton*): No. The wording connotes wilful deception.

Mr. BELL (*Carleton*): Would you not have to show intent?

Mr. FLEMING (*Eglinton*): Oh yes. There has to be mens rea in any of these cases.

The CHAIRMAN: Does clause 52 carry?

Clause agreed to.

Does clause 53 carry?

Clause agreed to.

Does Clause 54 carry?

Mr. FLEMING (*Eglinton*): This is just to apply to officers, directors or agents of the corporation the same liability which attaches to the corporation itself under the act.

The CHAIRMAN: Clause agreed to.

Does clause 55 carry?

Clause agreed to.

Does clause 56 carry?

Mr. BENIDICKSON: Both clauses 54 and 55 have to do with additional transfer of penalties under the administrative procedure, being something that we have not heretofore had in the administration of succession duty.

Mr. FLEMING (*Eglinton*): If you are speaking of clause 55, it is new. It imports the provisions of section 136 of the Income Tax Act in so far as applicable in relation to procedure, evidence and other matters that are set out therein.

These are not substantive provisions. They are provisions in relation to procedure and evidence.

Mr. BENIDICKSON: I was thinking of clause 54 as well.

Mr. FLEMING (*Eglinton*): Clause 54 contains a principle to be found both in the criminal code and in a great many other statutes. It applies to the officers, directors and agents of the corporation the same liability which attaches to the corporation for an offence wherein such an officer, director or agent directed,

authorized, assented to, or acquiesced in or participated in the commission of the offence. I think those are clear words, and I think there is no unfair liability imposed on any individual there in the light of words like those.

The CHAIRMAN: Does clause 56 carry?

Clause agreed to.

Mr. BENIDICKSON: In sub-caluse (2), what are we doing? This is new. Why have we not asked for it before?

Mr. LINTON: We have an agreement with other countries now. But they were negotiated by means of international negotiations and were "effectuated" by overriding acts.

The CHAIRMAN: Does clause 56 carry?

Clause agreed to.

Does clause 57 carry?

Mr. NUGENT: I am worried about paragraph (b) which reads as follows:

> 57.(1) (b) prescribing the evidence required to establish facts relevant to assessments under this act;

There seems to me to be quite a loophole here whereby, if under some assessment—if the case went to court, and the court ruled as to certain evidence that the department did not have sufficient evidence to establish their point of view, then all the department would have to do would be to bring in a regulation.

In prescribing that evidence as sufficient for their purposes, they might reverse the court's decision for future effect. It looks to me to be a pretty broad sort of power to give.

Mr. THORSON: This has to do with the obvious mechanics of establishing the value of a piece of property, whether by word of mouth or by a statement which would be sent into the department, or in certain other cases not relating to value, the evidence might be in the form of an affidavit.

This is a specific minimum requirement which would be needed to "effectuate" the mechanics of assessments.

Mr. NUGENT: I think some sort of wording to that effect might be necessary to put in here because even after studying the act a great deal it does seem to me that it could be interpreted now to mean that they could broaden it much more than that.

Mr. THORSON: A similar provision is contained in the Income Tax Act today.

Mr. NUGENT: I have never been quite convinced that the Income Tax Act is perfect.

Mr. FLEMING (*Eglinton*): Is there any case where, in the power to make regulations in reference to the terms and in prescribing the evidence required to establish the facts relevant to assessments, the act has been found to be capable of abuse? It is the same under the Income Tax Act.

Mr. THORSON: Take for example evidence required to establish the state of health. There you might require a certificate of some sort. Now, on appeal, it would be quite open for you to establish it in whatever manner the court required.

Mr. NUGENT: If a regulation made by this department required it to be established in a certain way, I wonder whether it would be open to a court to allow it to be established in another way?

Mr. THORSON: You would be in a position on appeal to go into the facts alleged in the affidavit.

This is merely to acquire the original document in the first place.

Mr. FLEMING (*Eglinton*): In the revision of 248 we reduced the power of the governor in council to make regulations. We could put in one of the clauses here.

Under the present Succession Duty Act the minister has the power to make regulations deemed necessary for the carrying of this act into effect;

(a) prescribing forms and providing for the use thereof;

(b) prescribing the amount, form and manner in which security shall be furnished;

(c) prescribing what rule, method and standard of mortality and of value, and what rate of interest shall be used in determining the value of annuities, terms of years, life estates, income, and interests in expectancy; and . . .

so on.

I do not think this language can be regarded as as broad as the language in the Succession Duty Act.

Mr. NUGENT: The explanation given calls for the words "prescribing the type of evidence", instead of the nature of evidence required.

Mr. FLEMING (*Eglinton*): I would be quite prepared, Mr. Chairman, to accept Mr. Nugent's suggestion, or one in line with it, and to insert after the word "prescribing", the word, "the nature of".

Mr. THORSON: That would put the matter beyond doubt. That is the interpretation that would be given to it by a court, in any case, I suggest.

Is clause 57 agreed to as amended?

Mr. BENIDICKSON: On paragraph 2—

The CHAIRMAN: Mr. Nugent moved an amendment.

Mr. NUGENT: To line 39 of page 43 of paragraph (b) deleting line 39 and substituting "prescribing the nature of the evidence required to establish facts".

The CHAIRMAN: Moved by Mr. Nugent and seconded by Mr. Bell. Is the amendment agreed to?

Amendment agreed to.

The CHAIRMAN: Is clause 57 agreed to?

Mr. BENIDICKSON: On subparagraph II, is not this an unusual provision, to provide this retrospective feature. First of all it has to be published in the Canada Gazette. That is quite usual; "but when so published a regulation shall, if it so provides, be effective with reference to a period before it was so published."

Mr. LINTON: The matter provided for is the gap that might occur between the making of the regulation and the time when it is published.

Mr. BENIDICKSON: Can you indicate to me some other reasons for publishing a regulation in the Canada Gazette?

Mr. THORSON: Yes, the Income Tax Act.

Mr. BENIDICKSON: Again, the Income Tax Act.

Mr. CRESTOHL: Do you not think you should limit the delay in how far back you can go?

Mr. THORSON: I should point out that this is, in many cases, beneficial to the taxpayer. In order to date the regulation back, to give it effect back to a dealth that occurred in the interval Mr. Linton spoke of.

Mr. CRESTOHL: It can also be reversed.

Mr. LINTON: There are not many regulations in this act that can govern anything.

Mr. THORSON: Regulation-making powers by and large, as Mr. Fleming pointed out, are confined to those matters that are necessarily incidental to the mechanics of the administration of the act.

Mr. FLEMING (*Eglinton*): I think it will be agreed that there is very little room for making regulations left in this act, or for the exercise of discretion. The whole tenor and tone of this bill is all aginst that sort of thing.

Mr. CRESTOHL: I agree with you.

The CHAIRMAN: Is clause 57 agreed to as amended?

Clause 57 as amended agreed to.

On clause 58—Definitions.

Mr. CRESTOHL: (c) is new corporations. The initial wording is "Corporation controlled by the deceased means, a corporation that, at the time in respect of which the expression is being applied, was controlled, whether through holding a majority of the shares of the corporation or in any other manner whatever, by the deceased or by any other person on behalf of the deceased". Can you illustrate, for example, in what other manner a man can control a corporation, other than by his shareholdings?

Mr. LINTON: He might control it by holding 45 per cent of the shares when no other stockholder owns more than 1 per cent. That is taking an extreme case. Although, he himself would not have the majority of the shares, he might control it by controlling a corporation which in turn controlled it.

Mr. FLEMING (*Eglinton*): There are many cases.

Mr. THORSON: A parent and a subsidiary.

Mr. LINTON: This provision would be subject to appeal and review by the courts as to whether what the minister deemed to be control in his assessment, was in fact, control.

Mr. BENIDICKSON: I was going to ask why you have introduced (e).

Mr. FLEMING (*Eglinton*): We did have that opened up earlier. Further, Mr. Thorson referred to the introduction of this definition of "disposition". Perhaps Mr. Thorson can review that again.

Mr. THORSON: The change is, of course, a reference to where the one transaction or a number of transactions are effected for the single purpose of the disposition. So, the disposition in effect is not defeated by the fact that it appears in the form of two separate parallel legal documents.

Mr. CRESTOHL: "(f) Employee includes an officer". That means an officer of the corporation.

Mr. THORSON: Yes.

Mr. CRESTOHL: Could a director not be an employee?

Mr. THORSON: By virtue of this, "employee" is defined as including an officer. "Officer" is a defined expression—on the next page. There is a paragraph there.

Mr. BELL (*Carleton*): It includes a director.

Mr. FLEMING (*Eglinton*): That is clause (m).

The CHAIRMAN: Is there anything on page 45?

Mr. BELL (*Carleton*): It even includes a member of the House of Commons.

The CHAIRMAN: Is there anything on page 46?

Mr. BENIDICKSON: The definition of "child" has been extended.

Mr. CRESTOHL: As it grows older?

The CHAIRMAN: Is clause 58 agreed to?

Clause 58 agreed to.

Clause 59 agreed to.

Clause 60 agreed to.

The CHAIRMAN: Shall the title carry?

Title agreed to.

The CHAIRMAN: Does the preamble carry?

Preamble agreed to.

The CHAIRMAN: Is the bill agreed to?

Bill agreed to.

The CHAIRMAN: Shall I report the bill as amended?

Agreed to.

Mr. FLEMING (*Eglinton*): Mr. Chairman, perhaps you will allow me to express my thanks to you and to the committee for the very thorough job that you have done in these fine meetings of the committee in reviewing this legislation. If I may say so, the committee has done a very workman-like job on this bill and I think it can be said that all of these provisions, some of them quite difficult, have been turned inside out by the committee. I point to the amendments that have been introduced which are going to be, we believe, beneficial. I would like to express my thanks to the committee for the work which the members have done on the bill, Mr. Chairman.

The CHAIRMAN: On behalf of the committee, Mr. Minister, I would like to thank you and your officials for your cooperation in getting this bill through.

—The committee adjourned.